

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

DAEMON D DIETRICH

§

VS.

§

CIVIL ACTION NO. 1:06cv79

DIRECTOR, TDCJ-CID

§

MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Daemond Dietrich, proceeding *pro se*, filed the above-styled petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The court referred this matter to the Honorable Earl S. Hines, United States Magistrate Judge, for consideration pursuant to applicable orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge recommending the petition be dismissed as barred by the applicable statute of limitations.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the records, pleadings and all available evidence. Petitioner filed objections to the Report and Recommendation. The court must therefore conduct a *de novo* review of the objections.

The magistrate judge concluded that the period of limitations began to run on the date on which petitioner's judgment became final. In contrast, petitioner states the period of limitations should not have begun to run until the date on which the facts supporting his grounds for review could have been discovered through the exercise of due diligence. While petitioner's grounds for review are based on events which occurred in 1984, when petitioner was convicted, he states his mental retardation prevented him from being aware of the facts until 2004, when he gave his legal files to a fellow inmate for review.

After considering the matter, the court is of the opinion that the period of limitations began to run in 1984, when petitioner's conviction became final. As the magistrate judge stated, while petitioner's mental condition may have preventing him from appreciating the legal

significance of the facts which form the basis of his grounds for review, his mental condition would not have prevented him from being aware of the facts. In addition, petitioner has not sufficiently demonstrated that his mental condition entitles him to invoke the doctrine of equitable tolling.

ORDER

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment shall be entered dismissing the petition.

So **ORDERED** and **SIGNED** this **18** day of **June, 2007**.

A handwritten signature in black ink, appearing to read "Ron Clark", is written above a horizontal line.

Ron Clark, United States District Judge